IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 20729 of 1998

Between:

The Director,

Defence Metallurgical Research Laboratory,

PO Kanchanbagh, Hyderabad.

..... PETITIONER

AND

1. Srhi C. Veeresham s/o C. Venkatesham,

   H.No. 18-1-337/49, Arundhathi Colony, Uppuguda, Hyderabad.

2. The Presiding Officer, Labour Court-I, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly one in the nature of Mandamus and

to declare the Award dated 9-3-1998 in ID.No. 136 of 1993 of the Labour Court-I, Hyderabad as being illegal, null and void.

Counsel for the Petitioner: MR.AKHTER AHMED JABRI.

Counsel for the Respondent No.1: Mr. V. NARASIMHA GOUD.

Counsel for the Respondent No.2: GP FOR LABOUR

WRIT PETITION NO : 20778 of 1998

Between:

The Director,

Defence Metallurgical Research Laboratory,

PO Kanchanbagh, Hyderabad.

..... PETITIONER

AND

1. S. Srinivas s/o Bhikshapathy, H.No. 1-38, Champapet village, Saroornagar Mandal, Ranga Reddy district.
2. The Presiding Officer, Labour Court-I, Hyderabad.

...RESPONDENTS.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly one in the nature of Mandamus and to declare the Award dated 9-3-1998 in ID.No. 133 of 1993 of the Labour Court-I, Hyderabad as being illegal, null and void.

Counsel for the Petitioner: MR.AKHTER AHMED JABRI.

Counsel for the Respondent No.1: Mr. V. NARASIMHA GOUD.

Counsel for the Respondent No.2: GP FOR LABOUR

WRIT PETITION NO : 21139 of 1998

Between:

The Director,

Defence Metallurgical Research Laboratory,

PO Kanchanbagh, Hyderabad.

..... PETITIONER

AND

1. Srhi A. Veera Reddy, s/o Srhi A. Papi Reddy, Lalagadimalakpet village, Shameerpet Mandal, Ranga Reddy district.

2. The Presiding Officer, Labour Court-I, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly one in the nature of Mandamus and to declare the Award dated 9-3-1998 in ID.No. 134 of 1993 of the Labour Court-I, Hyderabad as being illegal, null and void.

Counsel for the Petitioner: MR.AKHTER AHMED JABRI.

Counsel for the Respondent No.1: Mr. V. NARASIMHA GOUD.

Counsel for the Respondent No.2: GP FOR LABOUR

The Court made the following:

ORAL COMMON ORDER:

In all these writ petitions, the awards dated 09-03-1998 in I.D.Nos. 136 of 1993; 133 of 1993 and 134 of 1993 respectively passed by the Labour Court-I, Hyderabad, are under challenge.

The only question that falls for consideration of this court is whether the Defence Metallurgical Research Laboratory, Kahchanbagh, Hyderabad (for short 'the DMRL') can be said to be an 'industry' within the meaning of Section 2 (j) of the Industrial Disputes Act, 1947 (for short 'the Act').

The undisputed facts are that the respondents-workmen were engaged as Helpers in the petitioner-organisation and they had put in

more than five years of service in that capacity and their services were terminated orally with effect from 02-02-1991 without following the procedure as laid down under Section 25-F of the Act. Therefore, they have raised an industrial dispute before the Labour Court-I, Hyderabad under Section 2-A (2) of the Act.

The main contention of the petitioner before the Labour Court was that the petitioner is not an 'industry' within the meaning of Section 2(J) of the Act and the respondents-workmen are not 'workman' as defined under the Act.

On behalf of the workmen, W.W.1 was examined and on behalf of petitioner-organisation, M.W.1 was examined. On behalf of the workmen, Exs.W.1 to W.18 were marked and on behalf of the petitioner-organisation Exs.M.Ws. 1 to 6 were marked. After appreciation of entire oral and documentary evidence, the Labour Court came to the conclusion that the petitioner-organisation is an 'industry' within the meaning of Section 2 (j) of the Act. It further found that the respondents-workmen had worked for more than 240 days preceding the date of termination i.e., on 02-02-1991 and as such, their termination from service without complying with the provisions of Section 25(F) of the Act was bad in law and, therefore, allowed the claim petitions filed by the respondents-workmen and directed the petitioner-organisation to reinstate the workmen into service, with back wages from the date of removal till the date of reinstatement, and further directed to consider the case of the respondents-workmen for being appointed as 'regular helpers' provided there are vacancies and subject to eligibility. Aggrieved by this, the present writ petitions are filed by the petitioner-organisation.

The main thrust of the petitioner-organisation is that it is not an 'industry' within the meaning of Section 2(j) of the Act and, therefore, complying with the provisions of Section 25-F of the Act does not arise. In this regard, learned counsel for the petitioner-organisation has relied upon the judgment reported in *PHYSICAL RESEARCH LABORATORY Vs. K.G. SHARMA* ([1]) wherein it was held that the

Physical Research Laboratory, which is an institution under the Government of India's Department of Space engaged in pure research in Space Science, which was not connected with the production, supply or distribution of material goods or services, was held to be not engaged in an activity which can be called the business, trade or manufacture and as such, it was 'not an industry'. The petitioner-organisation also is a Research Laboratory and, therefore, the analogy of the said judgment squarely applies to the case on hand.

Per contra, the learned counsel for the respondents-workmen Mr. V.Narsimha Goud relied upon judgments of the Supreme Court in *COIR BOARD, ERNAKULAM, COCHIN & ANR., vs. INDIRA DEVI P.S. & ORS.,* ([2]); *COIR BOARD, ERNAKULAM, KERALA STATE & ANR., vs. INDIRA DEVI P.S. & ORS.,* ([3]) and *NRSA Vs. ADDL. INDUSTRIAL TRIBUNAL-CUM-ADDITIONAL LABOUR COURT* ([4]) and submitted that the judgment relied upon by the learned counsel for the petitioner-organisation was already considered in the judgment reported in *Coir Board, Ernakulam, Kerala State* (3 supra). He also submitted that the judgment reported in *Coir Board, Ernakulam, Cochin*, in view of various conflicting judgments, it was felt that the whole thing needs to be re-considered by a Larger Bench. The order reads as under:-

> ***19.*** *In an earlier judgment in the case of Sub-Divisional Inspector of Post, Vaikam v. Theyyam Joseph (1996) 8 SCC 489 : (1996 AIR SCW 1365), the establishment of the Sub-Divisional Inspector of Post was held not to be an industry but as an exercise of a sovereign function. In the case of Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange v. Union of India (1997) 6 SCC 723 : (1997 AIR SCW 2819), this Court, after examining the case law, held that workmen employed in the departmental canteen of Telephone Nigam Limited and admittedly holding civil posts were not workmen within the meaning of the Industrial Disputes Act. However, a Bench of three Judges of this Court in Civil Appeal No. 7845 of 1997, General Manager, Telecom v. S.*

Srinivasa Rao decided on 18-11-1997 (reported in 1998 AIR SCW 270) held that the cases of Sub-Divisional Inspector of Post (supra) and Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange (supra) were not correctly decided in view of the ratio laid down by a Bench of seven Judges of this Court in the case of Bangalore Water Supply and Sewerage Board (AIR 1978 SC 548) (supra).

***20**. Looking to the uncertainty prevailing in this area and in the light of the experience of the last two decades in applying the test laid down in the case of Bangalore Water Supply and Sewerage Board (AIR 1978 SC 548) (supra) it is necessary that the decision in Bangalore Water Supply and Sewerage Board's case (supra) is re-examined. The experience of the last two decades does not appear to be entirely happy. Instead of leading to industrial peace and welfare of the community (which was the avowed purpose of artificially extending the definition of industry), the application of the Industrial Disputes Act to organisations which were, quite possibly, not intended to be so covered by the machinery set up under the Industrial Disputes Act, might have done more damage than good, not merely to the organisations but also to employees by the curtailment of employment opportunities.*

23. Apart from such activities, there may be other activities also which are undertaken in the spirit of community service, such as charitable hospitals where free medical services and free medicines may be provided. Such activities may be sustained by free services, given by professional men and women and by donations. Sometimes such activities may be sustained by using the profits in the paid section of that activity for providing free services in the free section. Doctors who work in these hospitals may work for no returns or sometimes for very nominal fees. Fortunately, philanthropic instinct is far from extinct. Can such philanthropic organisations be called industries? The definition needs re-examination so that, while the workers in an industry have the benefit of industrial legislation, the community as such is not deprived of philanthropic and other vital services which contribute so much to its well-being. Educational services and the work done by teachers in educational institutions, research organisations, professional activities, or recreational activities, amateur sports, promotion of arts - fine arts and performing arts, promoting crafts and special skills, all these and many other similar activities also require to be considered in this context.

26. We do not think that such a sweeping test was contemplated by the Industrial Disputes Act, nor do we think that every organisation which does useful service and employs people can be labelled as industry. We, therefore, direct that the matter be placed before the Hon'ble the Chief Justice of India to consider whether a larger Bench should be constituted to re-consider the decision of this Court in Bangalore Water Supply and Sewerage Board (AIR 1978 SC 548) (supra).

In view of the above, the matter was referred to five member Bench of the Supreme Court. By a short judgment, the Supreme Court held that there is no necessity of re-considering the judgment rendered by seven judge Bench of the Supreme Court in *Bangalore Water Works case*, which reads as under:

1. *We have considered the order made in Civil Appeal Nos. 1720-21 of 1990. The judgment in Bangalore Water Supply and Sewerage Board vs. A. Rajappa & Ors., 1978 (2) SCC 213 was delivered almost two decades ago and the law has since been amended pursuant to that judgment though the date of enforcement of the amendment has not bee notified.*

2. *The judgment delivered by seven learned Judges of this Court in Bangalore Water Supply case does not, in our opinion, require any reconsideration on a reference being made by a two Judge Bench of this court, which is bound by the judgement of the larger Bench.*

3. *The appeals, shall, therefore, be listed before the appropriate Bench for further proceedings.*

Apart from that, under similar circumstances, a larger bench of this Court in NRSA's case (4 supra) considered that the National Remote Sensing Agency, connected with the space research activity, was held to be an 'industry' within the meaning of Section 2 (J) of the Act. This court also dealt with as to the nature of sovereign functions and

referred to the judgment of the Supreme Court in *Physical Research Laboratories* (referred to supra), which reads as under:

> "21.In the process of achieving its objects, for the purposes of which it has been established, the petitioner-Organisation employs and hires the services of various skilled, technical, operational and clerical personnel. The Organisation is empowered to recruit and appoint such personnel subject to various terms and conditions thereof.
>
> *Whether the petitioner-Organisation is an 'industry' within the meaning of that term as defined under Section 2 (j) of the Industrial DisputesAct,1947?*
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> 22. Section 2 (j) of the Act defines 'industry' and the same is as follows:
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> "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment handicraft, or industrial occupation or avocation of workmen."
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> 23. The definition of 'industry' has raised a variety of difficulties of interpretation. There are several explanations offered in the process of interpretation of the definition of 'industry'. The question as to what is the 'industry' has continuously baffled and perplexed the courts. The authoritative pronouncements themselves are characterised as judicial ventures in this rather volatile area of law. It is a difficult piece of exploration.
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> 24. The law on the subject is comprehensively dealt with by the Apex Court in Bangalore Water Supply V. A.Rajappa, AIR 1978 SC 548.
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> 25. The question as to whether the said Judgment delivered by seven learned Judges of the Supreme Court requires any re-consideration is set at rest by the Supreme Court itself in Coir Board Ernakulam Kerala State V. Indira Devai P.S. and others (2000) 1 SCC 224. The Supreme Court ruled that the Judgment in *Bangalore Water Supply* case (supra) does not require any reconsideration. Therefore, we shall examine the question on hand in the light of the principles laid down by the Supreme Court in *Bangalore Water Supply* case (supra). We do not propose to traverse into the matter in detail, but we shall proceed to examine the question as to whether the non-profit making research bodies are excluded from the definition of 'industry'. However, we shall bear in mind the law declared by the Supreme Court in *Bangalore Water Supply* case (supra) that merely because the employer is a government department or a local body (and, a fortiori, a statutory board, society or like entity) the enterprise does not cease to be an 'industry'. What the common man does not consider as 'industry' need not necessarily stand excluded from the statutory concept. It is observed:
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> "All the indicia of 'industry' are packed into the judgment which condenses the conclusion tersely to hold that 'industries' will cover

'branches of work that can be said to be analogous to the carrying out of a trade or 'business'. The case, read as a whole, contributes to industrial jurisprudence, with special reference to the Act, a few positive facets and knocks down a few negative fixations. Governments and municipal and statutory bodies may run enterprises which do not for that reason cease to be industries. Charitable activities may also be industries. Undertakings, sans profit motive, may well be industries. Professions are not ipso facto out of the pale of industries. Any operation carried on in a manner analogous to trade or business may legitimately be statutory 'industry'. The popular limitations on the concept of industry do not amputate the ambit of legislative generosity in Sec.2 (j). Industrial peace and the smooth supply to the community are among the aims and objects the Legislature had in view, as also the nature, variety, range and areas of disputes between employers and employees. These factors must inform the construction of the provision."

26. It is held in categorical terms that "the absence of profit motive or gainful objective is irrelevant by the venture in the public, joint, private or other sector".

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29. It is thus clear that even the research institutes although run without profit motive are the industries. (i) Professions, (ii) Clubs, (iii) Educational Institutions, co-operatives, (iv) research institutes, (v) charitable projects and (vi) other kindred adventures cannot be exempted from the scope of Section 2 (j) of the Act, provided they fulfil the triple test, viz., (i) systematic activity, (ii) organised by co-operation between employer and employee (the direct and substantial element is chimerical) and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or food).

30. We have already noticed the objects for which the NRSA has been established and its functions. We have no doubt whatsoever in our mind to hold that the petitioner-Organisation carries on a systematic activity with cooperation between itself and its employees, for the production and distribution of material services calculated to satisfy the human wants and wishes.

31. In the circumstances, even if the NRSA is considered to be a non-profit making research institute it cannot be exempted and excluded from the operation of the definition of 'industry' within the meaning of that term as defined under Section 2 (j) of the Act.

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35. In the circumstances, we are of the opinion that the decision rendered in *Physical Research Laboratory* (supra) which is stated to be a sister organisation of the petitioner concern has no application whatsoever in order to decide as to whether the petitioner-Organisation falls within the ambit of 'industry' as defined in Section 2 (j) of the Act.

36. Sri K.Subrahmanya Reddy, learned Senior Counsel, however, would contend that the NRSA actually discharges some of the functions of the Defence Department and the activities and functions so carried on by it are 'sovereign functions'. It is submitted that an organisation which discharges the 'sovereign functions' cannot be held to be an 'industry'.

Sovereignty:

What sovereign functions are excluded from the definition of 'industry'?

37. This question has been considered by the Supreme Court in *Bangalore Water Supply* case (supra) itself. Beg, C.J., observed that "the term 'sovereign' should be reserved, technically and more correctly, for the sphere of ultimate decisions. 'Sovereignty' operates on a sovereign plane of its own.....What is meant by the use of the term 'sovereign', in relation to the activities of the State, is more accurately brought out by using the term 'governmental' functions although there are difficulties here also inasmuch as the Government has entered largely now fields of industry. Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication."

38. This aspect of the matter has been elaborately dealt with by Chandrachud, J., (as His Lordship then was) in *Bangalore Water Supply* case (supra). The learned Judge concurring with the opinion of the majority specifically adverted to this aspect of the matter in somewhat detail. It is observed: (paragraph 172).

"One of the exceptions carved out by the Court is in favour of activities undertaken by the Government in the exercise of its inalienable functions under the Constitution, call it regal, sovereign or by any other name. I see no justification for excepting these categories of public utility activities from the definition of 'industry'. If it be true that one must have regard to the nature of the activity and not to who engages in it, it seems to me beside the point to enquire whether the activity is undertaken by the State, and further, if so, whether it is undertaken in fulfilment of the State's constitutional obligations or in discharge of its constitutional functions. In fact, to concede the benefit of an exception to the State's activities which are in the nature of sovereign functions is really to have regard not so much to the nature of the activity as to the consideration who engages in that activity; for, sovereign functions can only be discharged by the State and not by a private person. If the

State's inalienable functions are excepted from the sweep of the definition contained in Section 2 (j), one shall have unwittingly rejected the fundamental test that it is the nature of the activity which ought to determine whether the activity is an industry. Indeed, in this respect, it should make no difference whether, on the one hand, an activity is undertaken by a corporate body in the discharge of its statutory functions or, on the other, by the State itself in the exercise of its inalienable functions. If the water supply and sewerage schemes or fire fighting establishments run by a Municipality can be industries, so ought to be the manufacture of coins and currency, arms and ammunition and the winning of oil and uranium. The fact that these latter kinds of activities are, or can only be, undertaken by the State does not furnish any answer to the question whether these activities are industries. When undertaken by a private individual they are industries. Therefore, when undertaken by the State, they are industries. The nature of the activity is the determining factor and that does not change according to who undertakes it. Items 8, 11, 12, 17 and 18 of the First Schedule read with section 2 (n (vi) of the Industrial Disputes Act render support to this view. These provisions which were described in Hospital Mazdoor Sabha (AIR 1960 SC 610), as 'very significant' at least show that, conceivably, a Defence Establishment, a Mint or a Security Press can be an industry even though these activities are, ought to be and can only be undertaken by the State in the discharge of its constitutional obligations or functions. The State does not trade when it prints a currency note or strikes a coin. And yet, considering the nature of the activity, it is engaged in an industry when it does so." (Emphasis is of ours).

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45. It was urged that the department is not an 'industry' because the function discharged by the Department, more particularly the one relatable to the scheme in question, named Pachgaon Parwati Scheme undertaken in Pune District, is sovereign in nature. The Supreme Court repelled the said contention and held that "as per the *Bangalore Water Supply* case (supra) sovereign functions "strictly understood" alone qualify for exemption, and not the welfare activities or economic adventures undertaken by the Government. Even in the departments discharging sovereign functions, if there are units which are industries

and they are substantially severable, then they can be considered to be an industry." The three Judge Bench adopted the decision in *N.Nagendra Rao & Co*. (supra) that a function cannot be regarded as a sovereign function unless such function is a part of inalienable or inescapable function of the State. The Forest Department of State of Maharashtra was held to be an 'industry' within the meaning of that expression in Section 2 (j) of the Act.

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56. Thus the crucial test is the nature of the activity and that activity is determining factor and that does not change according to who undertakes it. The fact that some kinds of activities are, or can only be, undertaken by the State does not furnish any answer to the question as to whether those activities carried on by the State or its establishment is an industrial activity. Every activity carried on by the State or its instrumentalities in defence related matters cannot be equated to that of discharge of sovereign function. Even a government company manufacturing arms and ammunition exclusively for the purposes of defence may amount to an industrial activity, even though these activities are, ought to be and can only be undertaken by the State in the discharge of its constitutional obligations or functions. The crucial test is the nature of the activity.

57. We will conclude this discussion by referring to paragraph 172 in *Bangalore Water Supply* case (supra), which is extracted supra, and the same should put an end to this controversy.

58. In the light of the discussion, we reach to inescapable conclusion that none of the activities of NRSA could be construed to be 'sovereign' in nature. We have no hesitation to hold that the petitioner-Organisation falls within the definition of 'industry' under Section 2 (j) of the Act.

In view of the above, there is no necessity of dwelling at length as to other aspects. From the above, it is clear that the DMRL, the petitioner herein, is an ‘industry’ within the meaning of Section 2(j) of the Act. Therefore, the termination of the respondents-workmen from service on 02-02-1991 without complying the provisions of Section 25-F of the Act is arbitrary and illegal. Therefore, the impugned awards passed by the Labour Court-I, Hyderabad are neither can be said to be irregular nor invalid and does not call for interference by this court.

The writ petitions are, accordingly, dismissed. No costs.

C.V. RAMULU, J

Dt. 14-10-2004

Pvks/*

To

1.The Director,

Defence Metallurgical Research Laboratory,

PO Kanchanbagh, Hyderabad.

2. The Presiding Officer, Labour Court-I, Hyderabad.

3.2CCs to the Government Pleader for Labour, A.P. High Court Buildigns, Hyderabad (OUT).

4.2CD copies